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May 14, 2018

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William Kent Dean, DVM
Southern Oaks Animal Hospital
5733 Rockfish Road
Hope Mills, NC 28348

Letter of Caution
Board Rule 21 NCAC 66.0601(j)

Re: Complaint No. 2017058-7
Randall L. Scales

Dear Dr. Dean:

I write as attorney for the N.C. Veterinary Medical Board to explain the decision of the Board, through its Committee on Investigations No. 7, on the complaint against you by Mr. Randall L. Scales of Raeford.

Board Investigative Procedure

Complaints within the jurisdiction of the Veterinary Medical Board are investigated pursuant to the Veterinary Practice Act [North Carolina General Statute § 90-179 *et seq.*] and the Board Administrative Rules [21 NCAC 66.0101 *et seq.*]. Board Rule 21 NCAC 66.0601, copy enclosed, governs the investigation. This complaint was assigned to the Board's Committee on Investigations No. 7, which reviewed all relevant materials, including medical records, in this file to determine whether there is probable cause that you violated the Veterinary Practice Act and/or Board Rules on the issues presented.

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Summary of Complaint – Received 12/6/2017

Randall L. Scales of Raeford filed this complaint alleging what he believes were deficiencies in your treatment of his and his wife's four year-old Rottweiler, Molly, at Southern Oaks Animal Hospital (the "Hospital") in Hope Mills.

Mr. Scales writes that a previous surgery on Molly for a torn ACL was unsuccessful. [The Hospital medical records indicate that you performed CCL surgery on Molly on 1/4/16. The records also show that the Scaleses presented Molly to you on 2/28/17 for evaluation of her knee for apparent pain. You determined that Molly had a broken ligament in her right leg and recommended a TPLO surgery to repair the leg].

With respect to the surgery, Mr. Scales alleges that in suggesting the "tibial-plateau-leveling osteotomy (TPLO) surgery," you said that it would "fix the problem and that she'd be able to leap from a second floor window without concern." You performed the surgery on 3/21. You were Molly's primary care manager at the Hospital.

The wound never healed and had a continuous ooze of pus and blood. Molly was unable to stand on her leg and appeared to be in continuous pain. On one occasion during one of her appointments, you suggested treating the infection with a specific antibiotic. Mr. Scales recalls that he asked you why you would use that antibiotic if you were uncertain of the strain of infection. You "seemed to ponder the idea" and advised that you would wait until the results came back. You had taken a sample of synovial fluid from Molly's knee to be tested. You told Mr. Scales no infection was present. Mr. Scales alleges "that was not true."

You prescribed several pain medications and antibiotics which did not provide relief. Molly had a large infected circular wound on her back and was breaking out in pustules over other areas of her body. You "finally stated that the TPLO plate was being rejected" by Molly's body and that it had to be removed. You performed the removal surgery without charge to Mr. and Mrs. Scales, but the infection never went away. The infected leg continued to ooze pus and to bleed.

Beginning 10/5/17 Mr. and Mrs. Scales presented Molly to Cross Creek Animal Hospital in Fayetteville. Since that time, she has not had any infections. She was diagnosed with MRSA by means of culture and started on antibiotics immediately. The infection began improving within a few days of the initial appointment. The infection had progressed so much to where the bone

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had deteriorated. Mr. Scales writes that this was never found or mentioned by you after several visits and radiographs. You never mentioned that Molly had MRSA.

Molly is doing much better. Her leg, which had suffered much atrophy, is looking much stronger and she is able to stand without lifting her foot. Her foot and leg seem to be slightly twisted outward and she may need another surgery to correct the angle.

Your Response – Received 1/4/2018

You responded to Mr. Scales' complaint by letter received by the Board 1/4/18.

You are glad to learn that "Molly Brown" is doing better. You are disappointed that the Scaleses decided to file this complaint rather than talking to you about their concerns.

You never suggested that Molly would be able to "jump out of second story windows." You assume what Mr. Scales is alleging is that you guaranteed some type of outcome. You "have been in this profession for 30 years and been around the block too many times to guarantee anything." You write that there "are too many variables in any type of surgical procedure for definitive outcomes." What you most likely said was that TPLO was the best possible surgery to help Molly regain normal function of her leg.

Molly, a 116-pound Rottweiler, had a torn cranial cruciate. You performed a TPLO on her on 3/21/17. You add that you "have performed 83 TPLOs this year and have had great success with very few complications."

It is accurate that you had a lot of problems with infections at Molly's surgical site. Molly was hospitalized immediately following surgery because Mr. and Mrs. Scales were unable to give her oral medications because she would bite if anyone tried to force her to take medications.

Molly remained at the Hospital from 3/21 to 3/27 so that medications could be administered. At first, you and your staff could only give injections because Molly would bite, but you quickly determined how to administer oral medications to her with certain foods. You write that all of this work, including the medications, was done at no charge to the Scaleses. Your main concern throughout the case was to obtain the best for Molly without regard to your Hospital revenue.

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You do not recall the conversation when you and Mr. Scales talked about the culture and sensitivity of Molly's joint. Regarding his characterization of your response at that time, you ponder all of your clients' requests.

The culture, performed 4/24/17 at Rollins Laboratory, came back negative. You enclosed with your response a copy of the test results, which were received by the Hospital 5/1/17. You would not lie to Mr. and Mrs. Scales about whether an infection was present. Your hope was to get Molly's leg fixed and you hoped this would help you achieve that goal. You did not charge Mr. and Mrs. Scales for the culture, and you did not charge them for the laser treatments Molly received during her boarding from 5/10/17. Again, you were surely aware of the complications you were having but were determined to do all you could to get Molly better.

You did try multiple antibiotics and pain medications after consulting with other veterinarians. The removal of the plate was a priority but not to the detriment of Molly. It was important to remove the plate to eliminate the biofilm nidus, but you were waiting as long as you could so you would not destabilize the TPLO site and risk losing the leg. You did not feel pressure from the Scaleses to remove the plate. You knew when you needed to remove it and that is when you did it. That surgery was performed on 7/17/17. You hospitalized Molly until 7/21/17 to give her IV antibiotics and you sent her home with oral antibiotics. This was done at no charge to the Scaleses.

You are thrilled that Molly is doing better. You were very aware of the small unhealed area in Molly's bone where the TPLO osteotomy was performed. You assumed this was the area of infection. You showed this area to Mr. Scales on a radiograph on your computer screen before you removed the plate. You are certain that removing the plate helped a lot in Molly's recovery. Unless something has drastically changed since the last radiographs that you took at the time of the plate removal, you cannot imagine that Molly would need further surgery.

You express your sincere regrets to the Scaleses for the trouble that they and Molly endured during this period. This was definitely not what you expected. You write that you "did everything possible to make a bad situation better," and that "everything was done to the best of our ability to resolve the situation."

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You submit that with the facts presented it should be evident that this is not a malpractice case. You were trained to do this surgery by a boarded surgeon. You perform this surgery on a routine basis with consistently good results. When confronted with a surgical complication you acted in a compassionate and competent manner. You hope that Molly continues to recover.

Medical Records

Committee No. 7 reviewed the Hospital medical records for Molly as well as the records for her from Cross Creek Animal Hospital.

Mr. Scales' Reply – Received 1/19/2018

Following review of your response, Mr. Scales submitted a reply (received 1/19/18).

Mr. Scales writes:

Molly received an antibiotic resistant infection from TPOL surgery. The devise was sticking out of her leg before it was removed. Southern Oak Animal Hospital and Dr. Dean caused the infection, unnecessary pain, affected her quality of life and possibly shortened her life span as well.

The decision to file a complaint came only after your failure to provide adequate care.

Since the initial complaint was filed, Molly's surgical site re-opened due to the infection. Her new veterinarian seems to have correctly diagnosed the infection and prescribed the right medication. Her treatment plan includes a regimen of antibiotics and anti-inflammatories. These appear to be working. She will need to continue with these medications for several months. At this point, she is being monitored for possible re-opening of the infection site. Monitoring was one option; another option given to the Scaleses was to have the site reopened surgically and debrided and irrigated to remove any infection, but with no guarantee that that would work. A third option was to surgically remove Molly's leg. The Scaleses chose to keep her on the antibiotics in an attempt to cure her. Further health issues for Molly are "not an option," and the last option would be to consider euthanization.

Mr. Scales alleges that the surgery caused deformity in Molly's leg. This may cause further health issues and pain. He has been advised that once/if the infection clears she will need another TPOL to stabilize her leg.

Decision of Committee on Investigations No. 7

The members of Committee on Investigations No. 7 have reviewed and discussed the information presented to determine whether there is probable cause of a statutory or administrative rule violation.

The Committee finds and decides:

1. It is clear that Molly's complication following the 3/21/17 TPLO surgery was unanticipated. It is evident that you took extensive measures to address the complication. The Committee commends your empathy and professionalism in absorbing significant costs with respect to Molly's hospitalization and treatment as you addressed the complication issues.

2. You appropriately performed a culture and sensitivity of Molly's joint fluid, the results of which were negative. In light of this negative result, and with infection still present, it would have been accepted professional practice for you to have conducted an additional culture and sensitivity of the fluid of the draining tract.

Your not obtaining a culture and sensitivity of the draining tract fluid is not probable cause of a statute or rule violation. However, the Committee finds that your not doing so was not in accord with accepted professional practice, and for that reason it issues you a letter of caution on this issue pursuant to Board Rule 21 NCAC 66.0601(j).

3. Mr. Scales has alleged that you caused Molly's MRSA infection. The cause of the infection cannot be determined. There is no evidence that any action or inaction by you or your staff caused the MRSA infection.

4. In reviewing the Hospital medical records for Molly, the Committee notes that with respect to the treatment sheets for 3/21, 3/22 and 3/24, there appear to be omissions in the data entered of medications she received. On the sheet for 3/21, a staff member initialed that the medications Vetprofen, Cipro and Tramadol were administered at 8:00 a.m. but there are no entries

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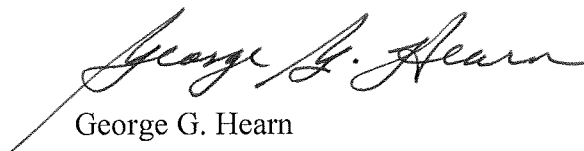
these medications were given that afternoon, as prescribed. The sheet for 3/22 reflects that these medications and a "TAB" ointment were administered at 7:00 p.m., but the blocks on the sheet were not checked to confirm their being given earlier that day. The 3/24 sheet appears to include only confirmation that the medications were administered at 8:00 a.m.

The Committee's reference to these apparent treatment sheet omissions is not a finding that the medications were not administered to Molly but rather that they were not recorded in the record as having been administered. The Hospital records for Molly are very detailed and these omissions are not part of the bases of the letter of caution. Nevertheless, the Committee recommends careful monitoring of treatment records to ensure that all pertinent information is entered.

This concludes the Committee's findings and decision, which have been accepted by the Board. The investigation is concluded and the file is closed.

If you have any questions about this letter or the decision, please contact Dr. Tod J. Schadler, Executive Director.

Very truly yours,



George G. Hearn
Attorney for the Board

GGH/dbc
Enclosure

cc: Mr. Randall L. Scales
Board Members
Tod J. Schadler, DVM, Executive Director